



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

July 19, 2021

Martin Kanupp
Owner
Kanupp Kennels, LLC
8574 NC Hwy 127 N
Hickory, North Carolina 28601

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J SECTION .0304; and NOTICE of WARNING for VIOLATION of 02 NCAC 52J .0302(a).

AWS-CP-2021-10

**Facility: Kanupp Kennels
License Number 20584**

Dear Mr. Kanupp:

Pursuant to NCGS § 19A-40, I am issuing this notice that you, as owner of Kanupp Kennels, LLC, are hereby assessed a civil penalty of \$250.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,



Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian; Tina Hlabse, General Counsel, NCDA&CS; Christina L. Waggett, Assistant Commissioner, NCDA&CS; Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF)	NOTICE OF VIOLATION and
)	ASSESSMENT of CIVIL PENALTY
MARTIN KANUPP)	for VIOLATION of TITLE 02 N.C
OWNER OF)	ADMINISTRATIVE CODE ("NCAC")
)	CHAPTER 52J SECTION .0304; and
KANUPP KENNELS, LLC)	NOTICE OF WARNING for VIOLATION
)	of 02 NCAC 52J .0302(a).
)	

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, Kanupp Kennels, LLC (the "kennel") was a boarding kennel, licensed pursuant to N.C.G.S. § 19A-28.
2. On June 13, 2021, AWS received a complaint alleging failure to provide proper care for a dog named Chase during the transport provided by the kennel to the owner's home on June 11, 2021. Based on the information in the complaint, AWS opened an investigation.
3. As part of the investigation, the AWS Inspector conducted an unannounced site visit to the kennel on June 17, 2021. This site visit revealed the following:
 - (a) observation of the kennel's transport van noted that there was minimal air flow from the ventilation vents at the rear of the van where the transport crates were located;
 - (b) air flow was noted from the cab area towards the back of the van but this ventilation to the animals in the crates would have been significantly reduced given the design of the transport crates and the placement of the crates with the ventilated front panels facing the rear of the van;
 - (c) at the time of the site visit, the kennel owner had already ordered air-conditioning units for each van;
 - (d) in addition, the kennel owner had purchased 4 portable air-cooling fans for immediate use in the vans until the air-conditioning units had arrived and were installed.
4. The AWS Inspector interviewed the kennel owner in reference to the allegations contained in the complaint.
5. The AWS Inspector spoke with the office manager of the emergency clinic that treated Chase on June 11, 2021 and the office manager of the veterinarian that provided the follow-up veterinary care for Chase.
6. As part of the investigation the following relevant documentation was reviewed:
 - (a) information provided by the complainant in the complaint;
 - (b) veterinary medical records for the treatment of heat stroke of Chase on June 11, 2021;
 - (c) veterinary medical records for the follow-up care provided to Chase;

- (d) written statements from the kennel owner, the kennel's operations manager, and the driver of the van that transported Chase on June 11, 2021; and
- (e) relevant kennel records.

7. The veterinary medical records and statements from the involved parties are consistent with Chase developing an emergent medical condition during the transport. The transport driver did not seek medical care but rather proceeded directly to the dog owner's residence.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .0302(a) for failing to have the transport crates positioned in such a manner that each animal in the vehicle had sufficient fresh air to protect the health of the animal on June 11, 2021; and

02 NCAC 52J .0304 for failing to obtain emergency care for an animal during transport on June 11, 2021.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Martin Kanupp, as owner and operator of Kanupp Kennels, LLC, is hereby assessed a civil penalty for the following violations:

\$250.00 for violation of 02 NCAC 52J .0304 for failing to obtain emergency care for an animal during transport on June 11, 2021

\$250.00 TOTAL AMOUNT ASSESSED

NOTICE of WARNING


As to the remaining violation of 02 NCAC 52J .0302(a) for failing to have the transport crates positioned in such a manner that each animal in the vehicle had sufficient fresh air to protect the health of the animal on June 11, 2021, this Warning Letter serves as written notice indicating in which respects the kennel may have violated the NC Animal Welfare Act and the rules issued pursuant thereto.

AWS acknowledges that the kennel had taken significant corrective actions before the June 17, 2021 site visit to mitigate this violation.

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

(See Appendix for text of referenced General Statutes and Administrative Code)

July 19, 2021
Date

 DVM, MS

Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used by persons subject to the Animal Welfare Act to transport cats and dogs shall be constructed, ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall be maintained between 50 degrees F and 85 degrees F. A shelter shall be deemed as being in compliance if its vehicles' animal containment units are equipped with operable air-conditioning, forced-air cooling and heating or other temperature control mechanisms.

*History Note: Authority G.S. 19A-24;
 Eff. April 1, 1984;
 Amended Eff. March 23, 2009; January 1, 2005.*

02 NCAC 52J .0304 CARE IN TRANSIT

It shall be the responsibility of the attendant or driver to inspect animals frequently enough to assure health and comfort and to determine if they need emergency care and to obtain it if needed.

History Note: Authority G.S. 19A-24;